



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No.: 201124-0317]

RTID 0648-XT038

#### Atlantic Highly Migratory Species; 2021 Atlantic Shark Commercial Fishing Year

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; fishing season notification.

**SUMMARY:** This final rule establishes the 2021 opening date for all Atlantic shark fisheries, including the fisheries in the Gulf of Mexico and Caribbean. This final rule also establishes the shark fisheries quotas for the 2021 fishing year, with adjustments based on harvest levels during 2020, and establishes the large coastal shark (LCS) retention limits for directed shark limited access permit holders. NMFS may increase or decrease these retention limits for directed shark limited access permit holders during the year, in accordance with existing regulations, to provide equitable fishing opportunities for commercial shark fishermen in all regions and areas, to the extent practicable. These actions could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea.

**DATES:** This rule is effective on January 1, 2021. The 2021 Atlantic commercial shark fishing year opening dates and quotas are provided in Table 1 under

#### SUPPLEMENTARY INFORMATION.

**ADDRESSES:** Atlantic Highly Migratory Species (HMS) Management Division, 1315 East-West Highway, Silver Spring, MD 20910;

<https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>.

**FOR FURTHER INFORMATION CONTACT:** Lauren Latchford

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**SUPPLEMENTARY INFORMATION:**

**Background**

The Atlantic commercial shark fisheries are managed primarily under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. For the Atlantic commercial shark fisheries, the 2006 Consolidated HMS FMP and its amendments established, among other things, measures related to commercial shark retention limits, commercial quotas for species and management groups, and accounting for under- and overharvests in the shark fisheries. Regulations include adaptive management measures, such as flexibility in establishing opening dates for the fishing season and the ability to make inseason trip limit adjustments, which provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas.

On September 29, 2020, NMFS published a proposed rule (85 FR 60947) regarding management measures for the commercial shark fisheries for the 2021 fishing year. The rule proposed opening all Atlantic commercial shark management groups on January 1, 2021, setting initial retention limits for large coastal sharks (LCS) by directed shark limited access permit holders, and adjusting certain quotas for the 2021 fishing year based on harvest levels during 2020. The proposed rule contains background information and details that are not repeated here. The comment period on the proposed rule closed on October 29, 2020. NMFS received six written comments during the comment period.

Those comments, along with NMFS' responses, are summarized below. After considering all the comments, NMFS is finalizing the rule as proposed.

Specifically, NMFS is opening the fishing year for all shark management groups on January 1, 2021. As described in the proposed rule, in establishing the opening date, NMFS considered the "opening commercial fishing season" criteria at 50 CFR 635.27(b)(3). These criteria include the following factors: available annual quotas for the current fishing season; estimated season length and average weekly catch rates from previous years; length of the season and fishermen participation in past years; impacts to accomplishing objectives of the 2006 Consolidated HMS FMP and its amendments; temporal variation in behavior or biology of target species (*e.g.*, seasonal distribution or abundance); impact of catch rates in one region on another; and effects of delayed season openings. This final rule also establishes a starting retention limit for directed shark limited access permit holders in the blacktip, aggregated LCS, and hammerhead management groups of 45 LCS other than sandbar sharks per vessel per trip for the entire Gulf of Mexico region (which includes both the eastern and western sub-regions), and 36 LCS other than sandbar sharks per vessel per trip for the Atlantic region. This final rule does not affect or change the current retention limit for incidental shark limited access permit holders for all regions. Consistent with § 635.24(a)(3) and (4), the current retention limit will remain at 3 LCS other than sandbar sharks per vessel per trip, and no more than 16 small coastal sharks (SCS) and pelagic sharks, combined, per vessel per trip. Additionally, the retention limit for blacknose sharks for all permit holders in the Atlantic region south of 34°00' N. lat. will remain at eight blacknose sharks per trip consistent with § 635.24(a)(4). Blacknose sharks may not be harvested in the Gulf of Mexico region.

This final rule adjusts certain annual commercial quotas for 2021 based on over- and/or underharvests, calculated after accounting for landings reported by October 9,

2020, consistent with existing regulations. Updated landings information as of October 9, 2020 has been considered, and no quotas are changed from the proposed rule as a result. While this action adjusts certain quotas as allowable, it does not establish or change the annual baseline commercial quotas established under the 2006 Consolidated HMS FMP and its amendments for any shark management group. The baseline quotas were established under previous actions, and any changes to those baseline quotas would be performed through a separate action.

### **Response to Comments**

NMFS received six written comments on the proposed rule from interested members of the public. All written comments can be found at <http://www.regulations.gov/> by searching for NOAA-NMFS-2020-0108-0001. All of the comments received are summarized below.

*Comment 1:* NMFS received four comments requesting a reduction in or prohibition of all commercial shark fishing. One of these comments requested that more research be conducted on shark stocks, and that more international management be considered given the migratory nature of some of these species.

*Response:* These comments are outside the scope of this rulemaking because the purpose of this rulemaking is to adjust certain quotas for the 2021 shark season based on over- and underharvests from the previous years and to set opening dates and commercial retention limits for the 2021 shark season. This action does not reanalyze the overall management measures for sharks, which have been analyzed and implemented through previous rulemaking processes for the 2006 Consolidated HMS FMP and its amendments. This action also does not address international management of shark stocks, although we note that the United States complies with recommendations made by the International Commission for the Conservation of Atlantic Tunas, the Convention on International Trade in Endangered Species, and other international regional fisheries

management fora, as appropriate, regarding international management of relevant shark stocks.

*Comment 2:* NMFS received two comments supporting the proposed rule.

Although generally supportive overall, one of those comments cautioned against allowing carryover of underharvest for smoothhound and blacktip sharks due to the potential for climate change and other environmental factors to have impacts on those species.

*Response:* With regard to the caution against carryover of underharvest, this portion of the comment is outside the scope of this rulemaking. This action carries out and applies quota adjustment measures that were previously adopted and codified through rulemaking. This action does not alter the underlying regulations governing the process for taking into account over- and underharvests from the previous years and establishing opening dates and commercial retention limits. We note that NMFS is considering shark management measures regarding the carryover of under- and overharvests of quotas in Draft Amendment 14 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (85 FR 60132; September 24, 2020). To provide comments on Draft Amendment 14, please see [www.regulations.gov](http://www.regulations.gov) and search for NOAA-NMFS-2019-0040-0009. More information can also be found at <https://www.fisheries.noaa.gov/action/amendment-14-2006-consolidated-hms-fishery-management-plan-shark-quota-management>. Comments on Draft Amendment 14 can be submitted until December 31, 2020.

### **Changes from the Proposed Rule**

After considering public comments, NMFS is finalizing the rule as proposed, without changes regarding the fishing season opening dates, retention limits, or quota harvest thresholds at which to consider adjusting retention limits.

### **2021 Annual Quotas**

This final rule adjusts certain 2021 commercial quotas due to overharvests and/or underharvests in 2020 and previous fishing years, based on landings data received by October 9, 2020. Underharvest adjustments can only be applied to stocks or management groups that are not overfished, have no overfishing occurring, or do not have an unknown status. Also, the underharvest adjustments cannot exceed 50 percent of the base annual quota. The 2021 annual quotas are summarized in Table 1 by species and management group. At this time, NMFS anticipates that landings in dealer reports that are received by NMFS after October 9, 2020, will be accounted for by adjusting certain 2022 quotas, as appropriate, although such landings could also be accounted for in 2021. A description of the quota calculations is provided in the proposed rule and is not repeated here.

**Table 1 -- 2021 Proposed Quotas and Opening Date for the Atlantic Shark Management Groups**

Region or Sub-region	Management Group	2020 Annual Quota (A)	Preliminary 2020 Landings <sup>1</sup> (B)	Adjustments <sup>2</sup> (C)	2021 Base Annual Quota (D)	2021 Proposed Annual Quota (D+C)
Western Gulf of Mexico	Blacktip Sharks <sup>3</sup>	347.2 mt dw (765,392 lb dw)	223.1 mt dw (491,750 lb dw)	115.7 mt dw (255,131 lb dw)	231.5 mt dw (510,261 lb dw)	347.2 mt dw (765,392 lb dw)
	Aggregated <sup>4</sup> Large Coastal Sharks	72.0 mt dw (158,724 lb dw)	81.6 mt dw (179,958 lb dw)	-	72.0 mt dw (158,724 lb dw)	72.0 mt dw (158,724 lb dw)
	Hammerhead Sharks	11.9 mt dw (26,301 lb dw)	< 3.6 mt dw (< 8,000 lb dw)	-	11.9 mt dw (26,301 lb dw)	11.9 mt dw (26,301 lb dw)
Eastern Gulf of Mexico	Blacktip Sharks <sup>3</sup>	37.7 mt dw (83,158 lb dw)	4.0 mt dw (8,809 lb dw)	12.6 mt dw (27,719 lb dw)	25.1 mt dw (55,439 lb dw)	37.7 mt dw (83,158 lb dw)
	Aggregated Large Coastal Sharks	85.5 mt dw (188,593 lb dw)	66.2 mt dw (146,047 lb dw)	-	85.5 mt dw (188,593 lb dw)	85.5 mt dw (188,593 lb dw)
	Hammerhead Sharks	13.4 mt dw (29,421 lb dw)	< 3.4 mt dw (< 7,500 lb dw)	-	13.4 mt dw (29,421 lb dw)	13.4 mt dw (29,421 lb dw))
Gulf of Mexico	Non-Blacknose Small Coastal Sharks	112.6 mt dw (248,215 lb dw)	46.3 mt dw (102,034 lb dw)	-	112.6 mt dw (248,215 lb dw)	112.6 mt dw (248,215 lb dw)
	Smoothhound Sharks	504.6 mt dw (1,112,441 lb dw)	1.4 mt dw (3,144 lb dw)	168.2 mt dw (370,814 lb dw)	336.4 mt dw (741,627 lb dw)	504.6 mt dw (1,112,441 lb dw)
Atlantic	Aggregated Large Coastal Sharks	168.9 mt dw (372,552 lb dw)	54.7 mt dw (120,663 lb dw)	-	168.9 mt dw (372,552 lb dw)	168.9 mt dw (372,552 lb dw)
	Hammerhead Sharks	27.1 mt dw (59,736 lb dw)	13.6 mt dw (30,018 lb dw)	-	27.1 mt dw (59,736 lb dw)	27.1 mt dw (59,736 lb dw)
	Non-Blacknose Small Coastal Sharks	264.1 mt dw (582,333 lb dw)	64.7 mt dw (142,611 lb dw)	-	264.1 mt dw (582,333 lb dw)	264.1 mt dw (582,333 lb dw)
	Blacknose Sharks (South of 34° N. lat. only)	17.2 mt dw (37,921 lb dw)	4.0 mt dw (8,848 lb dw)	-	17.2 mt dw (37,921 lb dw)	17.2 mt dw (37,921 lb dw)
	Smoothhound Sharks	1,802.6 mt dw (3,971,587 lb dw)	231.8 mt dw (510,957 lb dw)	600.9 mt dw (1,323,862 lb dw)	1,201.7 mt dw (2,649,268 lb dw)	1,802.6 mt dw (3,971,587 lb dw)
No regional quotas	Non-Sandbar LCS Research	50.0 mt dw (110,230 lb dw)	5.3 mt dw (11,792 lb dw)	-	50.0 mt dw (110,230 lb dw)	50.0 mt dw (110,230 lb dw)
	Sandbar Shark Research	90.7 mt dw (199,943 lb dw)	< 18.1 mt dw (< 40,000 lb dw)	-	90.7 mt dw (199,943 lb dw)	90.7 mt dw (199,943 lb dw)
	Blue Sharks	273.0 mt dw (601,856 lb dw)	0 mt dw (0 lb dw)	-	273.0 mt dw (601,856 lb dw)	273.0 mt dw (601,856 lb dw)

	Porbeagle Sharks	1.7 mt dw (3,748 lb dw)	0 mt dw (0 lb dw)	-	1.7 mt dw (3,748 lb dw)	1.7 mt dw (3,748 lb dw)
	Pelagic Sharks Other Than Porbeagle or Blue	488.0 mt dw (1,075,856 lb dw)	33.8 mt dw (74,442 lb dw)	-	488.0 mt dw (1,075,856 lb dw)	488.0 mt dw (1,075,856 lb dw)

<sup>1</sup> Landings are from January 1, 2020, through October 9, 2020, and are subject to change.

<sup>2</sup> Underharvest adjustments can only be applied to stocks or management groups that are not overfished have no overfishing occurring, or do not have an unknown status. Also, the underharvest adjustments cannot exceed 50 percent of the base annual quota.

<sup>3</sup> This adjustment accounts for the underharvest in 2020. This final rule would increase the overall Gulf of Mexico blacktip shark quota by 128.3 mt dw (282,850 lb dw). Since any underharvest would be divided based on the sub-regional quota percentage split, the western Gulf of Mexico blacktip shark quota will be increased by 115.7 mt dw, or 90.2 percent of the quota adjustment, while the eastern Gulf of Mexico blacktip shark quota will be increased by 12.6 mt dw, or 9.8 percent of the quota adjustment.

<sup>4</sup> While there is an overharvest of the western Gulf of Mexico Aggregated LCS sub-regional quota in 2020, the full Gulf of Mexico regional quota has not been filled. Thus, this rule maintains the full baseline quota in 2021.



## 2021 Atlantic Commercial Shark Fishing Year

After considering the seven “opening commercial fishing season” criteria listed in § 635.27(b)(3), as described in the proposed rule (85 FR 60947; September 29, 2020), and after considering public comment, this rule establishes a January 1, 2021 commercial shark fishing year start date for all management groups in all regions.

Regarding the LCS retention limit, as shown in Table 2, directed shark limited access permit holders fishing on the Gulf of Mexico blacktip shark, aggregated LCS, and hammerhead shark management groups will start the commercial fishing year with a limit of 45 LCS other than sandbar sharks per vessel per trip. Directed shark limited access permits fishing on the Atlantic aggregated LCS and hammerhead shark management groups will start the commercial fishing year with a limit of 36 LCS other than sandbar sharks per vessel per trip. These retention limits could be changed throughout the year based on consideration of the inseason trip limit adjustment criteria at § 635.24(a)(8).

Specifically, in the Atlantic region, NMFS will closely monitor the quota at the beginning of the year. If it appears that the quota is being harvested too quickly to allow fishermen throughout the entire region the opportunity to fish (*e.g.*, if approximately 40 percent of the quota is caught at the beginning of the year), NMFS will consider reducing the commercial retention limit, potentially to three LCS other than sandbar sharks per vessel per trip. Given the geographic distribution and migration patterns of the sharks at this time of year (*i.e.*, they head north before moving south again later in the year), the retention limit would be adjusted to ensure there is quota available later in the year (see the criteria at § 635.24(a)(8)(i), (ii), (v), and (vi)). Then, based on prior years’ fishing activity, and to allow more consistent fishing opportunities later in the year, NMFS may consider raising the commercial retention limit later in the year. Any future increase or decrease in a retention limit would depend on a review of the inseason trip limit adjustment criteria at § 635.24(a)(8).

All of the shark management groups will remain open until December 31, 2021, or until NMFS determines that the landings for any shark management group have reached, or are projected to reach, 80 percent of the available overall, regional, and/or sub-regional quota, if the fishery's landings are not also projected to reach 100 percent of the applicable quota before the end of the season, or when the quota-linked management group is closed. For the blacktip shark management group, regulations at § 635.28(b)(5)(i) through (v) authorize NMFS to close the management group before landings reach or are expected to reach 80 percent of the available overall, regional, and/or sub-regional quota after considering the following criteria and other relevant factors: Season length based on available sub-regional quota and average sub-regional catch rates; variability in regional and/or sub-regional seasonal distribution, abundance, and migratory patterns; effects on accomplishing the objectives of the 2006 Consolidated Atlantic HMS FMP and its amendments; amount of remaining shark quotas in the relevant sub-region; and regional and/or sub-regional catch rates of the relevant shark species or management groups. Additionally, NMFS has previously established non-linked and linked quotas; linked quotas are explicitly designed to concurrently close multiple shark management groups that are caught together to prevent incidental catch mortality from exceeding the total allowable catch. The linked and non-linked quotas are shown in Table 2. If NMFS determines that a shark species or management group must be closed, then NMFS will publish a notice in the **Federal Register** of closure for that shark species, shark management group, region, and/or sub-region that will be effective no fewer than 4 days from the date of filing for public inspection (§ 635.28(b)(2) and (3)). From the effective date of the notice and time of the closure, the fisheries for the shark species or management group are closed, even across fishing years, until NMFS announces, via the publication of a notice in the **Federal Register**, that additional quota is available and the season is reopened.

**Table 2 -- Quota Linkages, Opening Dates, and Commercial Retention Limit by Regional or Sub-Regional Shark Management Group**

Region or Sub-region	Management Group	Quota Linkages	Opening Dates	Commercial Retention Limits for Directed Shark Limited Access Permit Holders (inseason adjustments are available)
Eastern Gulf of Mexico	Blacktip Sharks	Not Linked	January 1, 2021	45 LCS other than sandbar sharks per vessel per trip
	Aggregated Large Coastal Sharks	Linked		
	Hammerhead Sharks			
Western Gulf of Mexico	Blacktip Sharks	Not Linked	January 1, 2021	45 LCS other than sandbar sharks per vessel per trip
	Aggregated Large Coastal Sharks	Linked		
	Hammerhead Sharks			
Gulf of Mexico	Non-Blacknose Small Coastal Sharks	Not Linked	January 1, 2021	N/A
	Smoothhound Sharks	Not Linked	January 1, 2021	N/A
Atlantic	Aggregated Large Coastal Sharks	Linked	January 1, 2021	36 LCS other than sandbar sharks per vessel per trip  If quota is landed quickly ( <i>e.g.</i> , if approximately 40 percent of the quota is caught at the beginning of the year), NMFS anticipates considering an inseason reduction and later considering an inseason increase. <sup>1</sup>
	Hammerhead Sharks			
	Non-Blacknose Small Coastal Sharks	Linked (South of 34° N. lat. only)	January 1, 2021	N/A
	Blacknose Sharks (South of 34° N. lat. only)			8 blacknose sharks per vessel per trip (applies to directed and incidental permit holders)
	Smoothhound Sharks	Not Linked	January 1, 2021	N/A
No regional quotas	Non-Sandbar LCS Research	Linked	January 1, 2021	N/A
	Sandbar Shark Research			
	Blue Sharks	Not Linked	January 1, 2021	N/A
	Porbeagle Sharks			
	Pelagic Sharks Other Than Porbeagle or Blue			

<sup>1</sup> This action modifies the percent of quota harvested at which it considers adjusting the retention limit. NMFS will consider adjustment to 40 percent to allow fishermen in the Atlantic region to more fully utilize the quota.

## **Classification**

The NMFS Assistant Administrator has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, and other applicable laws.

Pursuant to 5 U.S.C. 553(d)(3), the NMFS Assistant Administrator has determined that there is good cause to waive the 30-day delay in the date of effectiveness for the adjusted quotas and opening dates for the pelagic shark, shark research, blacknose shark, non-blacknose small coastal shark, and non-sandbar large coastal shark fisheries in the Atlantic and Gulf of Mexico regions, because such a delay is contrary to the public interest.

A delay in the date of effectiveness for this rule would cause negative economic and ecological impacts as discussed below. Regarding the pelagic shark fishery, a delay in the effectiveness of the quotas in this rule would postpone the start of the 2021 pelagic shark fishery until 30 days after the publication date of this rule. Most pelagic shark species are captured incidentally in swordfish and tuna pelagic longline fisheries that will be open in early January. If the quotas in this rule are not made effective as close to January 1, 2021, as possible, fishermen in those fisheries will have to discard, dead or alive, any pelagic sharks that are caught, while quota is technically available to be used for their retention.

Regarding the shark research fishery, NMFS selects a small number of fishermen to participate in the shark research fishery each year for the purpose of providing NMFS with biological and catch data to inform stock assessments and effectively manage the Atlantic shark fisheries. All trips in this fishery are monitored with 100 percent observer coverage. Delaying the opening of the shark research fishery would prevent NMFS from maintaining the data for the monthly time-series of wintertime abundance for shark species or collecting vital biological and regional data during this time of year. Not conducting the research trips could limit information available for stock assessments and, thus, NMFS' ability to properly manage the shark fisheries

because needed information would not be available for stock assessments, which would be contrary to the public interest.

Regarding the blacknose shark, non-blacknose small coastal shark, and smoothhound shark fisheries, these fisheries have both a directed component, where fishermen target these shark species, and an incidental component, where fishermen target other species such as Spanish mackerel and bluefish, but may incidentally catch these shark species and potentially land them. The incidental fishery catches small coastal and smoothhound sharks throughout the year. Delaying this action for 30 days would force all fishermen to discard, dead or alive, any small coastal and smoothhound sharks that would be caught before this rule becomes effective. Opening the fishery as close to January 1, 2021, as possible ensures that any mortality associated with landings is counted against the commercial quota in real-time. Additionally, a month-long delay in opening the small coastal shark and smoothhound shark fisheries would occur during the time period when fishermen typically target these shark species, resulting in fishermen experiencing negative economic impacts, which would be contrary to the public interest.

Regarding the non-sandbar large coastal shark fishery in the Atlantic and Gulf of Mexico region, opening on January 1, 2021, would allow south Atlantic fishermen to have a winter fishery and to potentially benefit from a better price per pound, given the geographic distribution of the sharks at this time of year. Delaying the opening of the non-sandbar large coastal shark fishery in the Atlantic and Gulf of Mexico region for an additional 30 days would have negative economic impacts on fishermen because they would not be able to fish for that period. Additionally, many of the primary species targeted in the non-sandbar large coastal shark fisheries are locally available in the southern portion of the Atlantic region in January and a 30-day delay would cause fishermen to miss fishing opportunities, and the associated revenue. Therefore, delaying this action for 30 days is contrary to the public interest.

For the reasons described above, the Assistant Administrator finds good cause to waive the 30-day delay in the date of effectiveness of the quotas and opening dates for the pelagic

shark, shark research, blacknose shark, non-blacknose small coastal shark, smoothhound shark, and non-sandbar large coastal shark fisheries in the Atlantic and Gulf of Mexico regions.

These final specifications are exempt from review under Executive Order 12866.

In compliance with section 604 of the Regulatory Flexibility Act (RFA), NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule. The FRFA analyzes the anticipated economic impacts of the final actions and any significant economic impacts on small entities. The FRFA is below.

Section 604(a)(1) of the RFA requires an explanation of the purpose of the rulemaking. The purpose of this final rule is, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, to establish the 2021 Atlantic commercial shark adjusted fishing quotas, retention limits, and fishing seasons. Without this rule, the Atlantic commercial shark fisheries would close on December 31, 2020, and would not reopen until appropriate action was taken. While there may be some direct negative economic impacts associated with the opening dates for fishermen in certain northern Atlantic areas, given the geographic distribution and migration patterns of the sharks at this time of year (*i.e.*, they head north before moving south again later in the year), there could also be positive effects for other fishermen in the south Atlantic region. The opening dates were chosen to allow for an equitable distribution of the available quotas among all fishermen across regions and states, to the extent practicable.

Section 604(a)(2) of the RFA requires NMFS to summarize significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis (IRFA), provide a summary of NMFS' assessment of such issues, and provide a statement of any changes made as a result of the comments. The IRFA was completed as part of the proposed rule for the 2021 Atlantic Commercial Shark Season Specifications. NMFS did not receive any comments specific to the IRFA.

Section 604(a)(3) of the RFA requires NMFS to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule and provide a detailed statement of any change made to the proposed rule as a result of the comments. NMFS did not receive any comments from the Chief Counsel for Advocacy of the SBA on the proposed rule.

Section 604(a)(4) of the RFA requires NMFS to provide an estimate of the number of small entities to which the rule would apply. The SBA has established size criteria for all major industry sectors in the United States, including fish harvesters. Provision is made under SBA's regulations for an agency to develop its own industry-specific size standards after consultation with SBA and an opportunity for public comment (see 13 CFR 121.903(c)). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards, but only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA. To utilize this provision, NMFS must publish such size standards in the **Federal Register**, which NMFS did on December 29, 2015 (80 FR 81194; 50 CFR 200.2). In that final rule effective on July 1, 2016, NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes. NMFS considers all HMS permit holders to be small entities because they had average annual receipts of less than \$11 million for commercial fishing.

As of October 2020, the final rule would apply to the approximately 214 directed commercial shark permit holders, 256 incidental commercial shark permit holders, 163 smoothhound shark permit holders, and 93 commercial shark dealers. Not all permit holders are active in the fishery in any given year. Active directed commercial shark permit holders are defined as those with valid permits that landed one shark based on HMS electronic dealer reports. Of the 470 directed and incidental commercial shark permit holders, only 18 permit holders landed sharks in the Gulf of Mexico region and only 74 landed sharks in the Atlantic

region. Of the 163 smoothhound shark permit holders, only 65 permit holders landed smoothhound sharks in the Atlantic region and fewer than 4 landed smoothhound sharks in the Gulf of Mexico region. NMFS has determined that the final rule would not likely affect any small governmental jurisdictions.

Section 604(a)(5) of the RFA requires NMFS to describe the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which would be subject to the requirements of the report or record. None of the actions in this final rule would result in additional reporting, recordkeeping, or compliance requirements beyond those already analyzed in the 2006 Consolidated HMS FMP and its amendments.

Section 604(a)(6) of the RFA requires NMFS to describe the steps taken to minimize the economic impact on small entities, consistent with the stated objectives of applicable statutes. This rulemaking does not establish new management measures to be implemented, but rather implements previously adopted and analyzed measures as adjustments within a range of previously-authorized activities, as specified in the 2006 Consolidated HMS FMP and its amendments and the Environmental Assessment (EA) for the 2011 shark quota specifications rule (75 FR 76302; December 8, 2010). Thus, in this rulemaking, NMFS adjusted certain baseline quotas established and analyzed in the 2006 Consolidated HMS FMP and its amendments by subtracting the underharvest or adding the overharvest, as specified and allowable in existing regulations. Under current regulations (§ 635.27(b)(2)), all shark fisheries close on December 31 of each year, or when NMFS determines that the landings for any shark management group has reached, or is projected to reach, 80 percent of the available overall, regional, and/or sub-regional quota if the fishery's landings are not projected to reach 100 percent of the applicable quota before the end of the season, or when the quota-linked management group is closed. The fisheries do not open until NMFS takes action, such as this rulemaking, to re-open the fisheries. Thus, not implementing these management measures would



negatively affect shark fishermen and related small entities, such as dealers, and also would not provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas.

Based on the 2019 ex-vessel meat and fin prices (Table 3), fully harvesting the unadjusted 2021 Atlantic shark commercial base quotas could result in total fleet revenues of \$9,997,263. For the Gulf of Mexico blacktip shark management group, NMFS will increase the baseline sub-regional quotas due to the underharvests in 2020. The increase for the western Gulf of Mexico blacktip shark management group could result in a \$241,691 gain in total revenues for fishermen in that sub-region, while the increase for the eastern Gulf of Mexico blacktip shark management group could result in a \$27,645 gain in total revenues for fishermen in that sub-region. For the Gulf of Mexico and Atlantic smoothhound shark management groups, NMFS will increase the baseline quotas due to the underharvest in 2020. This would cause a potential gain in revenue of \$403,475 for the fleet in the Gulf of Mexico region and a potential gain in revenue of \$1,112,680 for the fleet in the Atlantic region.

All of these changes in gross revenues are similar to the changes in gross revenues analyzed in the 2006 Consolidated HMS FMP and its amendments. The FRFAs for those amendments concluded that the economic impacts on these small entities are expected to be minimal. In the 2006 Consolidated HMS FMP and its amendments and the EA for the 2011 shark quota specifications rule, NMFS stated it would be conducting annual rulemakings and considering the potential economic impacts of adjusting the quotas for under- and overharvests at that time.

**Table 3 -- Average ex-Vessel Prices per lb dw for Each Shark Management Group, 2019**

Region	Species	Average Ex-Vessel Meat Price	Average Ex-Vessel Fin Price
Western Gulf of Mexico	Blacktip Shark	\$0.70	\$9.16
	Aggregated LCS	\$0.73	\$15.81
	Hammerhead Shark	\$0.52	\$12.00
Eastern Gulf of Mexico	Blacktip Shark	\$0.75	\$8.00
	Aggregated LCS	\$0.56	\$12.00

	Hammerhead Shark	\$0.50	\$13.43
Gulf of Mexico	Non-Blacknose SCS	\$0.59	\$5.81
	Smoothhound Shark	\$1.06	-
Atlantic	Aggregated LCS	\$0.99	\$3.51
	Hammerhead Shark	\$0.46	-
	Non-Blacknose SCS	\$1.02	\$4.60
	Blacknose Shark	\$1.27	
	Smoothhound Shark	\$0.78	\$1.68
No Region	Shark Research Fishery (Aggregated LCS)	\$0.86	\$15.15
	Shark Research Fishery (Sandbar only)	\$0.68	-
	Blue shark	-	-
	Porbeagle shark	\$0.36	\$2.51
	Other Pelagic sharks	\$1.35	\$7.60

For this final rule, NMFS reviewed the “opening commercial fishing season” criteria at § 635.27(b)(3)(i) through (vii) to determine when opening each fishery will provide equitable opportunities for fishermen, to the extent practicable, while also considering the ecological needs of the different species. The 2020 fishing year and previous years’ over- and/or underharvests were examined for the different species/complexes to determine the effects of the 2021 final quotas on fishermen across regional fishing areas. NMFS examined season lengths and previous catch rates to ensure equitable fishing opportunities for fishermen. Lastly, NMFS examined the seasonal variation of the different species/complexes and the effects on fishing opportunities. In addition to these criteria, NMFS also considered updated landings data and public comment on the proposed rule before arriving at the final opening dates for the 2021 Atlantic shark management groups. For the 2021 fishing year, NMFS is opening the shark management groups on January 1, 2021. The direct economic impacts will be neutral on a short- and long-term basis for the Gulf of Mexico blacktip shark, Gulf of Mexico aggregated LCS, Gulf of Mexico hammerhead shark, Gulf of Mexico non-blacknose shark SCS, Gulf of Mexico and Atlantic smoothhound shark, Atlantic non-blacknose shark SCS, Atlantic blacknose shark, sandbar shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups, because NMFS did not change the opening dates of these fisheries from the status quo of January 1.

Opening the aggregated LCS and hammerhead shark management groups in the Atlantic region on January 1 will result in short-term, direct, moderate, beneficial economic impacts, as fishermen and dealers in the southern portion of the Atlantic region will be able to fish for and sell aggregated LCS and hammerhead sharks starting in January. The opening date finalized in this rule for the Atlantic region has been the same or similar to those since 2016.

Based on past public comments, some Atlantic fishermen in the southern and northern parts of the region prefer a January 1 opening for the fishery as long as the majority of the quota is available later in the year. Along with the inseason retention limit adjustment criteria in § 635.24(a)(8), NMFS monitors the quota through the HMS electronic reporting system on a real-time basis. This allows NMFS the flexibility to further provide equitable fishing opportunities for fishermen across all regions, to the extent practicable. The direct impacts to shark fishermen in the Atlantic region of reducing the retention limit depend on the needed reduction in the retention limit and the timing of such a reduction. Therefore, such a reduction in the retention limit for directed shark limited access permit holders is only anticipated to have minor adverse direct economic impacts to fishermen in the short-term; long-term impacts are not anticipated as these reductions would not be permanent.

In the northern portion of the Atlantic region, a January 1 opening for the aggregated LCS and hammerhead shark management groups, with inseason trip limit adjustments to ensure quota is available later in the season, will have direct, minor, beneficial economic impacts in the short-term for fishermen as they will potentially have access to the aggregated LCS and hammerhead shark quotas earlier than in past seasons. Fishermen in this area have stated that, depending on the weather, some aggregated LCS species might be available to retain in January. Thus, fishermen will be able to target or retain aggregated LCS while targeting non-blacknose SCS. In addition, opening the aggregated LCS and hammerhead shark management groups in January and using inseason trip limit adjustments to ensure the fishery is open later in the year in 2021 will cause beneficial cumulative economic impacts, because the action allows for a more

equitable distribution of the quotas among constituents in this region, consistent with the 2006 Consolidated HMS FMP and its amendments.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS has prepared a listserv summarizing fishery information and regulations for Atlantic shark fisheries for 2021. This listserv also serves as the small entity compliance guide. Copies of the compliance guide are available from NMFS (see

**ADDRESSES).**

**Authority:** 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

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